IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3273 of 2001

with

SPECIAL CIVIL APPLICATION No 8193 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTIBHAI NARANBHAI AMIN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3273 of 2001
MR MUKESH R SHAH for Petitioners No. 1-4
MR SP SEN AND MS DS PANDIT ASSTT GOVERNMENT PLEADERS for Respondents No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/10/2001

COMMON ORAL JUDGEMENT

Heard Mr.M.R.Shah, learned advocate appearing on behalf of the petitioners and the learned AGPs Mr.S.P.Sen and Ms.D.S.Pandit, appearing on behalf of the respondents in respective petition.

#. So far Special Civil Application No.3273 / 2001 is concerned, RULE has been issued by this Court and granted interim relief by order dated 3rd May, 2001 and the said interim relief is further directed to be continued till further order vide order dated 3rd July, 2001. In Special Civil Application No.8193 / 2001, this Court has issued notice on 21st Sept., 2001 made it returnable on 3rd October, 2001. Therefore, RULE in SCA No.8193 / 2001. Mr.S.P.Sen, learned AGP waives service of rule on behalf of the respondents. Since the issues and question of law involved arise in these two petitions are common, both these are heard together and are being disposed of by this common judgment.

#. The brief facts of Special Civil Application No.3273 / 2001 are that as per the case of the petitioners, they are in possession and occupation of the encroached land of Survey No.628 / 1 paiki since last more than 20 years. On 30-1-1989 the petitioner No.1 made application for regularisation, which was rejected by the Deputy Collector, Viramgam Prant. Thereafter, the petitioner No.1 again moved application on 14-4-1991 requesting to sell the land in question to him on payment of market price. However, in the mean time because of apprehension of removal of the petitioner from the land in question, he filed civil suit. On 6-6-1994 the Collector informed the petitioner No.1 that as the civil suit is pending, the application of the petitioner No.1 cannot be considered and the same is filed accordingly. Thereafter, 18th January, 1992 the petitioner No.2 again moved application and in response, similar reply was given by the Collector. Thereafter, on 25-5-1992 the petitioners also moved such application for reconsideration but the same have been rejected by the Collector on 4-11-1994 and similarly, the petitioner No.3 & 4 have also filed similar application. According to the petitioners, the respondents had not decided any such application for regularisation. The petitioners preferred Special Civil Application No.6817 / 1998 before this Court and this Court has while dealing with said petition, has issued certain directions to decide the application and thereafter the petitioners had withdrawn said petition. Pursuant to the aforesaid orders of this Court, the respondent No.1 has passed order to regularise

the land in question in favour of the respective petitioners on payment of Rs.2100/- per sq.mtrs and directed to pay two and half times more amount which comes to Rs.2,39,530/or the market price to be fixed by the District Land Price Committee prevailing at the time when the order was passed i.e. market price prevailing at the time of Spet, 2000. The petitioner has moved application for reconsideration the price only contending interalia that the market price which is considered is prevailing at the time of passing of the order dated Sept., 2000 and not prevailing at the time when the applications were moved in the years 1989, 1992 and 1994. However, the petitioners have also pointed out certain instances but the State Government has not considered the request for reducing the market price and fixing it as prevailing at the time when the applications were moved in the years 1989, 1992 and 1994 instead of at the time of passing of the order i.e. Sept., 2000. Therefore, the order passed by the Collector dated Sept., 2000 fixing the market price which is at Annexure-F pg.23 is challenged to the extent of fixing the market price prevailing at the date of passing the order and the petitioners have not challenged the order granting regularisation in respect of the land in question in favour of the petitioners.

#. So far the facts of Special Civil Application No.8193 / 2001 are concerned, the petitioner is in possession of the land admeasuring 190 sq.mtrs of survey No.628 / paiki situate at village Dehgam since more then 20 years. It is the case of the petitioner that along with petitioner, there are other more than 100 persons who were in occupation and possession of different portion of the land of Survey No.628 / A paiki situate at village Dehgam. In the year 1998, the petitioner moved an application for regularisation of the lands in question on payment of market price. According to the petitioner, initially, the petitioner had moved application on 2-1-1995 and February, 1995 with same request to regularise the land in question on payment of the market price but nothing was done by the respondent and therefore in 1998, the petitioner had moved another application. Pursuant to the application made by the petitioner in the year 1998 addressed to the Collector, Ahmedabad, who was pleased to direct the Deputy Collector to send report and accordingly, vide order dated 11-4-98 the Deputy Collector, Ahmedabad had also submitted the opinion for regularisation of the possession of the petitioner. Inspite of the aforesaid facts, application of the petitioner was filed by the respondent on 18-11-96. However, the case of the petitioner is that

other 42 persons who were in possession of the lands bearing Survey No.628/A/Paiki similarly situated with the petitioner, their possession was regularised by the State Government and therefore, the petitioner again moved an application on 13-3-1997 to regularise the possession of the petitioner. However, no action is taken, the petitioner again moved an application on 19-6-1999. Thereafter, ultimately the respondent No.1 by his order passed in November, 2000 has passed the order regularising the possession of the petitioner in respect of the land admeasuring 190 sq.mtrs belong to Survey No.628 / A / Paiki with a condition to pay an amount of Rs.9,97,500/- being two and half time of the market price at the rate of Rs.2100/- per sq.mtrs considering the market price of the lands in question prevailing during November, 2000. Therefore, the case of the petitioners is that the respondent has not considered the market price prevailing at the time when the petitioner moved an application and has filed the present petition against the exorbitant market price which the petitioner can not bear. It is also case of the petitioner that in the year 1993 the Deputy Town Planner, Ahmedabad has fixed the market price at Rs.600/- per sq.mtrs, whereas the market price in the year 1992 in respect of the land in question was at Rs.500/-. Even in 1996 the market price of the land in question was at Rs.1100/- but the case of the petitioner is that the petitioner has moved the first application in the year 1988 and thereafter in the year 1992, 1994 and 1995 and therefore, the relief sought in this petition against the market price should be fixed considering the rate prevailing at the time of application moved in the year 1988, 1995 and 1997 not as per the price prevailing at the time of passing of the order. It is noted that the petitioner has not challenged the order granting regularisation of the land in question in favour of the petitioner.

#. Learned advocate Mr.M.R.Shah, appearing on behalf of the petitioners has submitted that when the petitioners have moved application before the respondent authorities to consider their case for regularisation of the land in question in their favour and to determine the price of the land in question from time to time. The petitioners had also shown their willingness and readiness to pay the market price while regularising the land in question in favour of the petitioners by the respondents. Therefore, Mr.Shah has submitted that several applications were made by the petitioners to the respondent authorities from time to time. But the respondent authority has rejected said applications and not passed any order thereon. Therefore, delay which has occurred is due to inaction on

the part of the respondent authority. Therefore, such delay should have any adversely affect against the petitioners while fixing the market price in respect of the land in question. Mr.Shah submitted that the applications had already filed by the petitioners requesting regularisation of the land in question long back and therefore, the authority ought to have considered the market price of the land in question prevailing at the time when the petitioners had made application to the respondent authority. Mr.Shah has also submitted that there was no fault on the part of the petitioner and delay has occurred because of the respondent authority as the authority has not decided the matters within reasonable time and therefore, there is lapse on the part of the respondent authority, now cannot adversely affect the market price of the land in question. Therefore, the request of the learned advocate Mr.Shah is to direct the respondent authority to reconsider the matter in respect of fixing the market price of the land in question prevailing at the time when the first application was submitted by the petitioner and on that occasion, the petitioners may be given an opportunity of hearing so that the petitioners can point out the real market price prevailing at the time of filing of the application for regularisation of the land in question. However, Mr.Shah has submitted that while regularising the land in question in favour of the petitioners at the time of fixing the market price, no opportunity of hearing was given to the petitioners, otherwise, the petitioners would have pointed out the correct prevailing market price in respect of the land in question on the relevant date of filing of the application.

#. Learned AGP Mr.S.P.Sen and Ms.D.S.Pandit appearing on behalf of the respondents of the respective petition have submitted that the land originally belong to the Government head initially encroached upon by the petitioners. However, the encroachments have been regularised by the concerned Collector fixing the market price taking into consideration the policy of the Government and the market price which has been fixed by the District Land Price Committee prevailing at the time when the order is passed by the Collector. Therefore, the orders passed by the Collector are legal and valid and no error is committed by the respondent - Collector while fixing the market price in respect of the land in question. However, it is also submitted that when the land in question has been regularised, naturally, the market price normally prevailing at the time of passing of the order, would be fixed and thus, current market

price prevailing at the time of passing of the order shall have to be taken into account and not the market price prevailing at the time during which the applications were made by the petitioner. Therefore, the approach of the respondent Collector in fixing the market price of the land in question is right based on the policy of the Government and therefore, no interference is required by this Court while exercising the powers under Article 226 and 227 of the Constitution of India.

#. I have considered the submissions advanced by the learned advocates for the parties. It is necessary to consider one aspect that the applications were submitted by the petitioners in both the cases to the respondent authorities with a request to regularise the land in question in favour oft he petitioner and also requested to fix the market price while regularising the land in question. However, it is born out that said applications were rejected by the Collector, made from to time and in response to said applications, no order has been passed by the respondent Collector. Therefore, not to consider the application submitted by the petitioners and rejecting the same by the respondent Collector and subsequently after the period of four to five years and even in some cases, after period of ten years, the respondent Collector has passed the order in favuor of the petitioner regularising the land in question and fixing the market price of the land in question prevailing at the time of passing the order. In above view of the matter, apparently inaction in not considering the application of the petitioners at the relevant time when the first application was submitted by the petitioners, resulted into delay of more than five to eight years and in even in some cases, more than 10 years in regularising the land in question in favour of the petitioners. Therefore, determining the market price of such land prevailing at the time of passing of the order, apparently an injustice to the petitioners. It is also necessary to note that while fixing the market price, the respondent Collector has not given any opportunity of hearing to the petitioners, otherwise, the petitioners would have drawn the attention of the respondent authority toward actual market price prevailing at the relevant time in respect of the land in question. However, from the record of this case, it seems that the respondent Collector has fixed the market price universally without giving an opportunity of hearing to the petitioners. Therefore, according to my opinion, when the authority has consumed unreasonable time in considering the application submitted by the petitioners for regularising the land in question and fixing the

market price and if the respondent Collector passed the order after the period of five to ten years fixing the market price prevailing at the time of passing of order, can be said to be clear injustice to the petitioners and such orders can be said to have passed in arbitrary manner. If the orders regularising the land in question had passed at the time of first application submitted by the petitioners, then, naturally the market price would have been fixed at the rate prevailing at the relevant time. But in the cases on hands, the petitioners of SCA No. 3273 / 2001 and the petitioner of SCA No.8193 / 2001 had already submitted their application in the year 1989 and 1995 respectively and the order in these cases are passed by the respondent Collector in Sept., 2000 and November, 2000 respectively taking into consideration the market price prevailing at the time of passing of the order in favour of the petitioners. It is also pertinent to note that the respondent Collector has not taken into consideration the recommendations submitted by the Deputy Town Planner, Ahmedabad for the year 1993. According the Deputy Town Planner, the market price of the land in question can be fixed at the rate of Rs.600/- per sq. mtrs which was subsequently increased in the year 1996 upto Rs.1100/-. Therefore, fact remains that the application by the petitioners in both these cases were submitted long back before five to ten years before passing the order finally in the year 2000 and the respondent Collector has passed the orders in the year Sept. / November, 2000 granting the regularisation of the land in question at the market price prevailing at the time of passing of the order, which is quite arbitrary in light of the time consumed by the respondent Collector. Therefore, the delay occurred in deciding the applications finally, cannot be adversely affect the case of the petitioners so far it relates to determination of the market price because even at the time of first application, the petitioners had shown their willingness and readiness to pay the market price prevailing at the relevant time of first application. Therefore, according to my opinion, the later part of the orders passed by the respondent Collector in both these petitions fixing the market price while regularising the land in favour of the petitioners without giving an opportunity of hearing, requires to be set aside. However, in view of this Court, the ends of justice will meet if the respondent Collector is directed to reconsider the case of the petitioners only in respect of fixing of the market price for the land in question keeping in mind the prevailing market rate at the time of first application made before the respondent Collector. However, it is also considered just and proper by this Court that before fixing such

market price, it is necessary to give at least a reasonable opportunity of hearing to the petitioners to enable them to point out relevant market price prevailing at the time when the petitioners had made the application for the first time.

#. In the result, both the petitions i.e. SCA No.3273 / 2001 and SCA No.8193 / 2001 succeed and same stand allowed accordingly. The later part of the order passed in Sept., 2000 by the respondent Collector impugned in SCA No.3273 / 2001 which is at Annexure-F pg.23 fixing the market price of the land in question and the order passed in November, 2000, by the respondent Collector impugned in SCA No.8193 / 2001, are hereby quashed and set aside only in respect of fixation of the market price. However, the very orders referred hereinabove, granting regularisation of the land in favour of the petitioners the land in question shall stand unaltered and said part of the order is not disturbed by this Court. Therefore, it is directed to the respondent Collector of these two petitions to reconsider the matter for fixing the market price in respect of the land in question involved in these two petitions, taking into consideration the market price prevailing at the relevant time when the petitioners had made first application to the respondent Collector and to determine the market price of the land in question after giving an opportunity of hearing to the petitioners and to pass appropriate orders in accordance with law within period of two months from the date of receiving the certified copy of this order.

Rule is made absolute accordingly to the extent indicated above in each petition. No order as to costs.

Date : 4-10-2001 [H.K.Rathod, J.]

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